IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2377 OF 1997

with

SPECIAL CIVIL APPLICATION NO. 2379 OF 1997

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BHAVESHKUMAR CHANDRAKANT RAVAL - Petitioner(s)

Versus

MAGANBHAI MADHABHAI MAKWANA &4 - Respondent(s)

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Appearance :

MR. MEHUL S. SHAH for MR VIPUL S MODI for Petitioner No(s).: 1.
MR YOGESH S LAKHANI for Respondent No(s).: 2
NOTICE SERVED for Respondent No(s).: 3.
MR RR MARSHALL for Respondent No(s).: 4.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 30/06/2005

COMMON ORAL JUDGMENT

1. By filing instant petitions under Article 226 of the Constitution of India, petitioners seek to challenge the common judgement and award dated 21.12.1996 rendered in MACP No. 40 of 1990 and 41 of 1990 by the MACT (Auxiliary) Banaskantha at Palanpur, by which two separate Claim Petitions filed by the petitioners to receive compensation, came to be rejected.
2. The Special Civil Application No. 2377 of 1997 has arisen from the MACP No. 41 of 1990 which is filed by the petitioner to receive compensation of Rs.6000/- for personal injury caused to him in an accident whereas Special Civil Application No. 2379 of 1997 has arisen from MACP No. 40 of 1999 filed by the petitioner to receive compensation for the damage caused to his Scooter in a road accident.
3. The incident in question has taken place on 28.7.1989. The petitioner of Special Civil Application No. 2377 of 1997 was riding the Scooter bearing registration No. GJV 169 belonging to his father from Kirti Stambh to Gurunanak Chowk. At that time, the driver of ST Corporation came from behind driving ST Bus No. GRR 8392 in rash and negligent manner and while overtaking the Scooter, dashed the same with the Scooter, as a result thereof the rider of the Scooter fell down and received injuries. In the accident Scooter also got damaged. Therefore, both the petitions were filed before the MACT (Auxiliary), Banaskantha at Palanpur, claiming compensation to which the reference is made earlier.
4. Both the petitions were contested by the ST Corporation inter alia contending that there was no negligence on the part of the Driver of the ST Corporation. Since the claim involved in both the petitions was less than Rs.10,000/-, the petitioners filed their affidavits inter alia contending that the accident was the result of rash and negligent driving on the part of the driver of the ST Corporation and also asserted about the damage caused to the Scooter as well as injury sustained by the rider of the Scooter.
5. The Tribunal, considering the affidavit and the written statement filed by the ST Corporation, came to the conclusion that the accident was the result of the rash and negligent driving on the part of the driver of the ST Corporation, however, rejected the claim only on the ground that so far as the damage caused to the Scooter is concerned, the owner of the Scooter has received the compensation from the insurance company whereas so far as the injury sustained by the rider

of the Scooter is concerned, it is very trivial and no particulars with regard to the injury sustained by him has been given, resultantly rejected both the claim petitions, which has given rise to these petitions at the instance of the original claimants.

6. This Court has heard Mr. Mehul S. Shah, learned advocate for Mr. Vipul Modi, learned advocate of the petitioners, Mr. Y.S.Lakhani, learned advocate for respondent Nos. 2 – ST Corporation and Mr.Adil Mirza, learned advocate for Mr. R.R.Marshall, learned advocate for the respondent – United India Assurance Co. Ltd. and perused the impugned judgement and award and also the set of evidence supplied by the learned advocates appearing for the parties during the course of their submissions.

7. There is no dispute with regard to the accident which has taken place on 28.7.1989 at 8:45 PM. The petitioner of Special Civil Application No. 2377 of 1997 was riding the Scooter bearing registration No. GJV 169 belonging to his father from Kirti Stambh to Gurunanak Chowk. At that time, the driver of ST Corporation came from behind in rash and negligent manner driving ST Bus No. GRR 8392and while overtaking the Scooter, dashed the same with the Scooter, as a result thereof the rider of the Scooter fell down and received injuries. In the accident Scooter also got damaged. The aforesaid fact has been stated on oath which has remained uncontroverted by the ST Corporation. Therefore the Tribunal has very rightly held that the accident has taken place because of rash and negligent driving on the part of the driver of ST Corporation.

8. So far as rejection of the claim on the ground that the owner of the Scooter has received the compensation from the Insurance Company and rider has not produced any medical bills and therefore the are not entitled to receive compensation, is absolutely erroneous and vague finding.

9. It is settled principle of law of Torts that the person whose vehicle is damaged in a vehicular accident is entitled to receive compensation from the 3rd Party. Here, ST Corporation is the third part. The claimants have produced bills as well as bill in respect of repairing of Scooter and therefore the Tribunal ought to have awarded the amount by assessing the damage caused to the Scooter. According to this Court, the claimant has produced the bill of Rs.4,856/- at exh.60. At the same time Scooter was old one, therefore according to this Court it would be in the fitness of thing to award compensation of Rs.2000/- for the damages caused to the Scooter.

10. Similarly, the petitioner of SCA No. 2377 of 1997 also sustained minor injuries, therefore he must have suffered mental pain, shock

and suffering. Therefore he is also entitled to receive amount under the head mental pain and suffering, including amount spent for medicines. Therefore, Rs.2000/- would be an adequate compensation under these heads.

11. Therefore, both the petitioners are entitled to receive compensation of Rs.2000/- each in lump sum with running interest @ 9% per annum from the date of application till realisation.

12. For the foregoing reasons, both the petitions succeed and accordingly they are allowed with no order as to costs. Each petitioner to recover a sum of Rs.2000/- from the ST Corporation with running interest @ 9% per annum from the date of the application till its realisation. The ST Corporation is directed to deposit the said amount with the Tribunal within a period of 8 weeks hereof. On depositing the said amount, the Tribunal shall pass necessary order of disbursement of the same to the petitioners.

13. Rule is made absolute to the aforesaid extent.

(A.M.Kapadia,J)

Jayanti*